**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**
**&**
**THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

**WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929**

**WP(C).No. 6387 of 2004(S)**
**----------**
**OA.677/2003 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH .**
**.....**

**PETITIONER:**
**----------**

**P.S. SOBHA, D/O. LATE K. SASIDHARAN NAIR, PALOTTU VILAYIL PUTHUVAL PUTHEN VEEDU (SOBHA BHAVAN) KARIMONKULAM, THIRUVANANTHAPURAM.**

**BY ADV. SRI.M.SREEKUMAR**

**RESPONDENTS:**
**----------**

1. **VIKRAM SARABHAI SPACE CENTRE (V.S.S.C) REPRESENTED BY THE ADMINISTRATION OFFICER - II (EST), HEAD OFFICE, THIRUVANANTHAPURAM.**

2. **GOVERNMENT OF INDIA, REPRESENTED BY THE SECRETARY, DEPPARTMENT OF SPACE, BANGALORE.**

**BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C) NO.6387/2004**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1:- COPY OF THE LETTER NO.VSSC/EST/E-PEN/35946/2345 DT. 17.2.92.**

**EXT.P2:- COPY OF THE LETTER NO.VSSC/EST/E-PEN/35496/6904 DT. 8.34.93.**

**EXT.P3:- COPY OF THE ORDER PASSED IN LOK ADALATH DT. 210.6.99 IN OS. NO.552/98.**

**EXT.P3(a):- COPY OF THE COMPROMISE PETITION IN OS. NO.552/98.**

**EXT.P4:- COPY OF THE LETTER DT. 18.10.99 BY THE PETITIONER TO THE 1ST RESPONDENT.**

**EXT.P5:- COPY OF THE ORDER NO.13.1/03-PER/ 263 DT. 10.4.03 TO THE PETITIONER FROM THE IST RESPONDENT.**

**EXT.P6:- COPY OF THE ORDER IN OA. NO.677/03 DT. 12.8.03 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.**

**EXT.R1:- COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DT. 18.10.99.**

**/TRUE COPY/**

**P.A. TO JUDGE**

**tss**

**K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.**

---

Writ Petition (C) No.6387 of 2004-S

---

Judgment

Balakrishnan Nair, J.

The petitioner was an applicant for appointment under the 1st respondent under the dying-in-harness scheme. The facts of the case are the following : The petitioner's father late K.Sasidharan was an employee of the Vikram Sarabhai Space Centre, the 1st respondent herein. While so, he died in harness on 03.01.1992. Her father did not have any other income. The only asset left by him was the residential building where the family consisting of her mother and grand mother, apart from the petitioner, was staying. The petitioner is a graduate with Diploma in Data Entry and Console Operation (Computer). She has also passed Typewriting English (Higher). Immediately after the death of her father, she applied for appointment under the dying-in-harness scheme to the 1st respondent. The said respondent replied by Ext.P1 communication dated 17.02.1992, directing her to produce the succession certificate from the competent civil court. Thereafter, she moved the civil court. While so, another lady and daughter came forward, stating that she is the wife of the deceased

K.Sasidharan Nair. In the suit filed by her, there was an injunction against release of the pensionary benefits to the petitioner and her mother. Finally, the dispute between the two families was settled as per Ext.P3 order of the Lok Adalath dated 30.06.1999. The half of the terminal benefits and the right to get employment under the dying-in-harness scheme were allotted to the share of the petitioner's family. Thereafter, she sent Ext.P4 letter to the 1st respondent, claiming employment. Thereupon, she was directed to submit the application in the prescribed format, which was later submitted by her. But the first respondent rejected her application by Ext.P5 order dated 10.04.2003. The relevant portion of the said order reads as follows :

> *"Your request has been considered carefully in terms of the instructions of Government of India about the implementation of the Scheme for compassionate appointment under the Central Government. As you are aware, the object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant whose death while in service has left his family in penury and without any means of livelihood so as to relieve the family from financial destitution.*

*Taking all the relevant factors into consideration including the financial condition of the family with particular reference to the receipt of Government and other dues and benefits, other assets and liabilities of the family number of dependents left behind by the deceased, their age, martial status of the children, especially that of daughters and other attendant factors including the length of service rendered by the deceased employee and the date on which he would have retired had he continued in service, the Competent Authority has come to the conclusion that the death of Shri.K.Sasidharan Nair has not resulted in the dependent family becoming indigent or penurious and without any means of livelihood such that any relief in terms of appointment on compassionate grounds is called for. It is regretted that your request for an appointment on compassionate grounds has not been agreed to. Your application is rejected accordingly."*

The petitioner challenged the said order before the CAT, by filing OA No.677/03. Her claim was rejected mainly on the ground that the family has been paid the terminal benefits. In the reply statement before the CAT, it was

contended that the scheme for employment under the dying-in-harness scheme is evolved for providing immediate assistance to the families of the Government servants, dying in harness so that they can survive indigence. Taking into account the relevant factors, it was contended that the petitioner's family cannot be considered as indigent and therefore, the rejection of the application was in order. The Tribunal simply said that there is no infirmity in the impugned order and further held that if the petitioner was in need of an employment, she would have immediately moved the CAT. Since she did not approach the legal forum on finding that her claim was not attended to and waited for a decision of the civil court, it should be taken that there was no extreme hardship or indigence for the applicant. On the basis of the said finding, the OA was dismissed by Ext.P6 order. This Writ Petition is filed, challenging the said order. According to the petitioner, the order of the first respondent is against the scheme for appointment under the dying-in-harness scheme. It also runs counter to the various decisions of the Apex Court. The decision of the Tribunal is untenable for overlooking the various relevant matters, it is submitted.

2. The respondents have filed a counter affidavit supporting the impugned order. Going by the averments in the said counter affidavit, the total amount paid to the petitioner's family will come to about Rs.12,000/-.

3. Heard the learned counsel on both sides. We feel that the stand of the 1st respondent in this case is unsupportable in law. Except the usual general incantation borrowed from some court decisions, Ext.P5 does not disclose the exact reasons for the rejection of the petitioner's application. The petitioner's family is having a small house in a two cent plot. Their annual income as evident from Ext.R1(ii) is only Rs.4,800/-. The scheme for compassionate appointment provides that an application for compassionate appointment should not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare scheme. The relevant clause in the said scheme is quoted below for convenient reference :

> *"The scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a*

*significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground, a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children, the essential needs of the family etc."*

Going by the scheme, we feel that the petitioner's case did not receive a fair consideration at the hands of the 1st respondent. In the light of the materials on record, it can be safely held that the petitioner's family is not having other income to support themselves. The mother was also unemployed. So, if the petitioner does not qualify for appointment, we feel that there is no meaning in framing such a scheme. At any rate, the petitioner who was waiting for

employment for years, is entitled to know the exact reason for rejecting her claim. The general statement in para 3 of Ext.P5 is difficult to be deciphered by a common man of reasonable intelligence. At least, the competent authority of the 1st respondent was bound to give the specific details in Ext.P5 so that it will reveal that there was application of mind by the competent authority and only thereafter, her claim was rejected. So, Ext.P5 is liable to be quashed and the competent authority of the 1st respondent is liable to be directed to pass a fresh order on the petitioner's claim, in plain language so that she could know why her claim was rejected or for what reason her claim for appointment is not acceptable.

4. We are constrained to observe that that the tribunal's approach in dealing with the claim of the petitioner is unsupportable. There was an interim injunction regarding disbursal of the terminal benefits as evident from Ext.P2 communication issued by the 1st respondent on 03.03.1993. So the petitioner's mother was advised to wait till the disposal of OP No.58/92 filed by Smt.Krishnamma, the rival wife. The said order reads as follows :

> *"This has reference to your letter dated 9.6.1993 on the above subject. In this connection, I am to inform you that an order*

*of injunction has been received from the Hon'ble Sub Court of Trivandrum, directing us not to disburse the benefits due to the family of late Shri.Sasidharan Nair to anybody till the disposal of OP (Succession) No.58/92 filed by Smt.J.Krishnamma and Kum.Lekha as widow and daughter respectively of late Shri.Sasidharan Nair. You are therefore advised to wait till the disposal of OP No.58/92 filed by Smt.Krishnamma to ascertain as to whom the benefits are payable."*

In the face of the said position, the petitioner could not have approached the Tribunal earlier. Even if she approached, the same would have resulted in sheer waste of time and money for her. Before the Tribunal, in the reply statement, the respondents have contended that the applicant has survived till this time and therefore, it should be presumed that they have some other means. The said approach of the 1st respondent is plainly unjust and quite unbecoming of a reputed institution like the said respondent. In the result, we quash Ext.P5 order of the 1st respondent and Ext.P6 order of the tribunal. The 1st respondent is directed to pass a fresh order in the matter in the light of the observations contained herein above within three months from the date of

receipt of a copy of this Judgment.

The Writ Petition is disposed of as above.

**K.BALAKRISHNAN NAIR,JUDGE**

10.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

sta